

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUMMONS FOR JUDGMENT NO.534 OF 2004

IN

SUMM.SUIT NO.5174 OF 2000

M/s Associated Breweries & Dis.P.Ltd ..Plff

versus

M/s Scotts Wines P.Ltd & ors .. Defts

...

Ms. F.S.Rai i/b Z.S.Irani for Plaintiff.

CORAM : D.G. KARNIK, J

DATED : 22nd March 2005.

P.C:-

1. Heard learned counsel for the plaintiff. None present for the defendants. The plaintiff has already filed on record the affidavit of service dated 30th August, 2004 proving the service of the Summons for judgment. Despite service of the Summons for Judgment as early as 5th July, 2004 the defendant has not filed an application for leave to defend nor filed an affidavit in reply. In the circumstances, the averments made in the plaint are deemed to be

accepted. Even at the hearing of the suit the defendants are absent.

2. The plaintiff has also filed on record the documents under a list. The documents are taken on record and collectively marked Exhibit A.

3. I have perused the plaint and the documents filed on record. The plaintiff sold, supplied and delivered to the defendants goods (bottles of beer) and sent invoices. After adjustment of the advance/deposit the principal amount of Rs.42,298.30 is due and payable from the defendants. In spite of demand, the defendants failed and neglected to make the payment. Hence, the plaintiff has filed this suit for recovery of the money and interest.

4. Learned counsel for the plaintiff hands in the revised calculations of interest. The revised calculations are taken on record and marked Exhibit B.

5. In the absence of an application for leave to defend nor an affidavit in reply, the plaintiff is entitled to a decree under order 37 Rule 3 (6) of the Code of Civil Procedure. Hence, Summons for Judgment

is made absolute and the suit of the plaintiff is decreed as follows :

" The defendants shall pay to the plaintiff a sum of Rs.64,847.34 together with interest on the principal sum of Rs.42,298.30 at 6 % p.a. from the date of the suit till payment and all costs of the suit. "

D.G.KARNIK, J